

46 Am. Jur. 2d Judges § 51

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Judges

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VII. Compensation; Benefits; Allowances for Expenses

A. In General

§ 51. Right to compensation and benefits of, or as between, particular types of judges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  [22\(.5\)](#) to [22\(4\)](#)

There is a disagreement among the courts as to whether the payment of salary to a de facto officer is a valid defense to an action brought by a de jure officer when the de jure officer is not performing the duties of the position.¹ While some decisions support the view that a state or municipality which has paid to a de facto officer the salary of the office is not liable to the de jure officer for such salary,² other cases are to the effect that such payment in no way impairs the right of the officer de jure to recover the salary or compensation from the public body charged with the duty of paying it.³ Under the latter view, a judge who establishes the entitlement to the office of county judge by disputing the election results is entitled to back pay, even though the judge who was initially declared the winner of the election has served and received pay during the period of the dispute.⁴ A de jure judge is entitled to back pay without setting off earnings from other sources if the state constitution requires judicial officers to devote full time to their judicial duties⁵ and if the de jure judge does not waive the right to compensation during the period in question, even though the party engages in the private practice of law.⁶

In some jurisdictions, statutes provide for the compensation of temporary judges.⁷ The incumbent, under such a statute, would also be entitled to the incumbent's regular salary and benefits.⁸ A state court judge appointed to fill the vacancy of an elected judge when such judge retired was not an "incumbent" judge appointed to serve the remainder of the elected judge's four-year term, and thus, was not entitled to the elected judge's salary for the term the appointee served, under a state constitutional provision that an "incumbent's salary, allowance, or supplement will not be decreased during the incumbent's term of office"; rather, the appointed judge had to run for election after serving at least six months, the appointee lost the election and therefore, the appointed judge's term ended on December 31 of that year, and the appointed judge was paid the same salary for the entire term of service.⁹

Footnotes

- 1 Am. Jur. 2d, Public Officers and Employees §§ 294, 436.
As to de facto judges, generally, see §§ 226 to 231.
- 2 Am. Jur. 2d, Public Officers and Employees §§ 294, 436.
- 3 Am. Jur. 2d, Public Officers and Employees §§ 294, 436.
- 4 Flack v. Graham, 453 So. 2d 819 (Fla. 1984).
- 5 Flack v. Graham, 453 So. 2d 819 (Fla. 1984); Reed v. Sloan, 475 Pa. 570, 381 A.2d 421 (1977).
- 6 Reed v. Sloan, 475 Pa. 570, 381 A.2d 421 (1977).
- 7 State ex rel. Godfrey v. Gollmar, 76 Wis. 2d 417, 251 N.W.2d 438 (1977).
As to substitute judges, generally, see § 232.
- 8 State ex rel. Godfrey v. Gollmar, 76 Wis. 2d 417, 251 N.W.2d 438 (1977).
As to disability benefits for judges, generally, see § 55.
- 9 Heiskell v. Roberts, 295 Ga. 795, 764 S.E.2d 368 (2014).

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